APPEAL NO. 010625

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 11, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury to her low back on _____, and that she had disability from July 1, 1999, to November 6, 2000, the date she reached maximum medical improvement (MMI). In addition, the hearing officer found that the claimant timely notified her employer pursuant to Section 409.001 of the 1989 Act; therefore, the hearing officer concluded that the appellant (carrier) was not relieved of liability under Section 409.002 of the 1989 Act. The carrier appeals on all issues and urges reversal on sufficiency of the evidence grounds. The claimant responds and requests that the Appeals Panel affirm the hearing officer's decision and order in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The claimant testified that on that date, while working for (employer) as an interior decorator, she twisted her back while hanging a 50-pound framed print over a bed in one of her employer's model homes. The claimant also testified that, by the next day, the pain became worse and she was unable to do much lifting or moving of furniture, as she had previously been required and able to do. The carrier presented medical records in which there was no reference to a specific mechanism of injury, nor did the records show a uniform, specific date of injury. Further, the medical records introduced by the carrier indicate that the claimant had a preexisting, degenerative back condition which, the carrier claimed, was the cause of the claimant's low back injury at issue.

The hearing officer did not err in concluding that the claimant had disability resulting from her compensable injury from July 1, 1999, until November 6, 2000. The claimant's testimony supports the hearing officer's conclusion in that she stated that her last day working with the employer was June 30, 1999. Also, the medical records indicate that the claimant reached her MMI November 6, 2000. The carrier maintained its position that the claimant did not incur a compensable injury and thus could not have disability resulting therefrom.

Finally, the hearing officer did not err in finding that the claimant notified her employer of the claimed injury on or before the 30th day after the injury. The claimant testified that when she was out of town setting up model homes her "supervisor" was the woman who had been with the company the longest, Ms. R, and not her "official" supervisor at the home office, Ms. S. The claimant then claimed that she informed Ms. R May 5, 1999, that she was having some back problems, and that, prior to June 3, 1999, she told Ms. R her problems were caused by a work-related injury occurring _____.

The carrier presented the testimony of both Ms. R and Ms. S, who averred that Ms. R and the claimant were coworkers and held the same position and title, despite Ms. R's approximately 12 years with the employer; further, the carrier introduced documentary evidence, signed by the claimant, acknowledging that Ms. S was her supervisor. Ms. S testified that the first time she knew of the claimant's allegation that her injury was work-related was upon her receipt of a letter from the claimant's lawyer long after the claimant's last day at work; in addition, Ms. S testified that she knew the claimant was having back problems in mid-June, but understood them to be nonwork-related at that time.

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disrupt the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge